THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.18478 OF 2005

DATED:6.3.2006

Between:

National Projects Construction Corporation

Limited, rep. by its Zonal Manager,

Bhubaneswar

Orissa

…Petitioner

And

The Chief Administrative Officer,

South Central Railway,

Secunderabad, A.P.

and another

…Respondents

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WRIT PETITION NO.18478 OF 2005

ORDER:

National Projects Construction Corporation (NPCC) assails the communication bearing Reference No.W.Con.148/YK/3285/WC-III, dt.6.7.2005, issued by first respondent to all the Chief Administrative Officers/Construction of all Railway Construction Offices in India to withhold the amounts payable to NPCC and further requesting the latter to intimate the position of amounts not paid.

NPCC was awarded the work of re-building of Bridge No.1123 (old No.1249) across river Krishna in Raichur – Wadi section of Guntakal division. The agreement was

entered into on 7.9.2004, which by reference incorporated all General Conditions of Contract (GCC). As per the terms of the contract, the first mobilization advance of Rs.79,65,150/- (rupees seventy nine lakhs sixty-five thousand one hundred and fifty only) [the estimated cost of the work is about Rs.16,00,00,000/- (Rupees sixteen crores only)], being 5% of the contract value, was paid to the petitioner on petitioner executing bank guarantee for the same. As the work was not commenced in spite of alleged approval of bed block drawings, first respondent terminated the contract on 16.6.2005 which was followed by impugned communication to all the Chief Administrative Officers of the Railways. It is mainly contended in the Writ Petition that the order of termination of the contract is unfair and arbitrary, and for redressal, the petitioner is seeking appropriate remedies. Therefore, in this Writ Petition the challenge is limited to withholding of payments payable by railway authorities. According to the petitioner, NPCC is undertaking works in East Coast Railway, North Central Railway, South Eastern Railway, Konken Railway (J&K), Eastern Railway, East Central Railway (Hazaribag), whose estimated value is about Rs.343.90 crores.

At the stage of admission itself, this Court passed orders suspending the impugned order for a period of eight weeks. The respondents have now moved an application being W.V.M.P.No.3089 of 2005 for vacating the interim order. When the matter came up before this Court on 16.2.2006, having regard to the fact that NPCC and Indian Railways are public organizations, this Court suggested some understanding between the parties insofar as withholding of payments to NPCC by other railways referred to hereinabove. When the matter is finally called today, the NPCC disputes the claim of the first respondent on the grounds more than one, and therefore the petitioner and the respondents could not reach any understanding.

In the counter affidavit filed by Chief Engineer, South Central Railway, the Writ Petition is opposed on the ground that the dispute is arbitrable that as per clauses 52 and 52-A of GCC, it is well within the powers of the employer to withhold the amounts payable to the petitioner and that by reason of the slackness on the part of the petitioner in commencing and completing the work, the respondents have incurred loss which is to be defrayed by the contractor.

A claim petition under Reference No.356701/235, dt.10.10.2005 is already made by NPCC to first respondent. In the said claim petition ten claims were submitted under clause 63 of GCC, and the respondents were also informed that denial of redressal would compel them to seek arbitral reference under clause 64 of GCC. This itself is sufficient ground to deny any relief in this Writ Petition. There cannot be any dispute that when once the binding contract provides for arbitration for resolution of all disputes, Writ Petition would not lie as held by the Supreme Court in **State of U.P. v. Bridge & Roof Company (India) Ltd.,** and this Court in **Gail (India) Ltd. v. Nagarjuna Cerachem Pvt. Ltd**. Now that the petitioner has already filed a claim petition, it is open to him to take other steps including filing of appropriate application under Section 9 of the Arbitration and Conciliation Act, 1996 regarding withholding of payments from other railways. In this Writ Petition, no relief can be granted.

The Writ Petition is accordingly dismissed.

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(V.V.S.RAO, J)

6.3.2006

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